

REMARKS

Claims 29-34 are presently pending. Applicants note with appreciation that the rejections previously set forth have been withdrawn. The Examiner presents new grounds for rejection.

Rejections under 35 U.S.C § 103(a)

Claims 29-32, and 34 stand rejected under 35 U.S.C. § 103(a) as purportedly unpatentable over Michael Gruenberg (US 2003/0175272 A1) in view of Gold (J. Surg. Res. 1995 Aug.; 59:279-86).

Claims 33 stands rejected under 35 U.S.C. § 103(a) as purportedly unpatentable over Michael Gruenberg (US 2003/0175272 A1) in view of Gold and in further view of Gale Granger (U.S. Patent No. 5,837,233) and Johnson (U.S. Patent No. 5,217,704).

In the Office Action at page 2, the Examiner notes that a translation of the priority document is required in order to show that the Gruenberg reference is predated by the priority claim of the present application, pursuant to 37 C.F.R. § 1.55. As requested, attached is the translation of the priority document, DE 101 20 505.8. Applicants submit that because the present application is entitled to claim priority to DE 101 20 505.8, Gruenberg is not available as a reference under 35 U.S.C. § 102(e). If a statement regarding the accuracy of the translation of the priority document is requested, Applicant would be pleased to provide one.

As Gruenberg is no longer available as citable art, Applicants request that these rejections be withdrawn.

CONCLUSION

In view of the foregoing amendments and remarks, Applicant respectfully submit that the application is in condition for allowance. Applicant respectfully request favorable consideration and prompt allowance of the application.


If there are any questions regarding this response or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket # 104341.B090019).

June 3, 2010

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Respectfully submitted,



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